

**TYRONE M. CHARBONNEAU**  
Claimant

**THE BOEING COMPANY**  
Respondent

**AETNA CASUALTY & SURETY COMPANY**  
Insurance Carrier

## WORKERS COMPENSATION FUND

## ORDER

## APPEARANCES

## RECORD AND STIPULATIONS

The record considered by the Appeals Board is listed in the Award. In addition, the parties entered into stipulations in this proceeding as shown in an undated, agreed Award signed by the parties and Administrative Law Judge Shannon S. Krysl and filed with the Division on February 1, 1994.

**ISSUES**

The only issue on this review is Fund liability. The Administrative Law Judge found none.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Appeals Board finds as follows:

The Award should be affirmed.

Claimant developed overuse injuries to both his upper extremities while working for the respondent. In the late spring and summer of 1991, claimant began to experience symptoms in his right wrist after using a heavy bucking bar to flatten large rivets. He then began to compensate for the right hand by using his other hand more and consequently began to experience left hand symptoms.

In July 1991, claimant sought treatment for his right wrist at respondent's medical dispensary. The dispensary's diagnosis at that time was wrist strain. After several more visits to respondent's medical department, in September 1991 respondent referred claimant to Paul D. Lesko, M.D., for treatment. By the time he saw Dr. Lesko, claimant was experiencing symptoms in both upper extremities. After the first examination, Dr. Lesko diagnosed bilateral flexor tenosynovitis and bilateral medial epicondylitis.

Respondent eventually referred claimant to J. Mark Melhorn, M.D., who performed right carpal tunnel release and right ulnar nerve release surgeries on claimant in September 1992 and left carpal tunnel release and left ulnar nerve release surgeries on claimant in October 1992.

While receiving medical treatment, claimant continued to work for respondent until he was taken off work for his surgeries.

In order to establish Fund liability, the respondent and its insurance carrier must prove it either hired or retained claimant in its employ despite its knowledge claimant had an impairment which constituted a handicap in obtaining or retaining employment. Also, the respondent and insurance carrier must prove the preexisting impairment either caused or contributed to a subsequent work-related injury or disability. See K.S.A. 44-567(a).

One of the principal issues in this proceeding is whether claimant's accident should be viewed as one period of accident or, in the alternative, as two separate accidents with the first accident causing injury to the right upper extremity and the second accident causing injury to the left upper extremity and additional injury to the right.

Analyzing the development of repetitive overuse injuries for the purpose of determining Fund liability is oftentimes difficult, especially when the condition develops over a significant period of time. When considering the fact that claimant's work duties required the forceful,

repetitive use of both hands along with the fact that claimant's symptoms became bilateral within a short period of time after their onset, the Appeals Board finds claimant's work-related bilateral upper extremity injury should be viewed as caused by one period of accident and injury rather than as two separate and distinct events. See Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994).

The foregoing conclusion is supported by Dr. Lesko's opinion that claimant's injuries developed as a continuing process rather than as two separate, identifiable injuries. Also, from the nature of claimant's job duties, one can also infer that claimant was sustaining simultaneous injury to both upper extremities even before he began to experience symptoms as such is the insidious nature of overuse injuries.

Based upon the above, the Appeals Board finds the Workers Compensation Fund has no liability in this proceeding. Before the period of accidental injury which the parties stipulated was May 1991 through April 13, 1993, claimant did not have an impairment which constituted a handicap in obtaining or retaining employment. Thus, before claimant's period of accident began respondent did not have knowledge of an impairment.

After considering the entire record, the Appeals Board finds the Workers Compensation Fund has no liability in this proceeding.

#### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award dated February 10, 1997, entered by Administrative Law Judge Jon L. Frobish should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1997.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Frederick L. Haag, Wichita, KS  
Scott J. Mann, Hutchinson, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director